

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

DOROTHY TURNER

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:22cv68-GHD-RP

O'CHARLEY'S, LLC

UNKNOWN DEFENDANT(S) ONE (1) THROUGH TEN (10)

DEFENDANT(S)

NOTICE OF REMOVAL

**TO: THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF MISSISSIPPI - ABERDEEN DIVISION**

Defendant O'Charley's, LLC, appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure, hereby gives this Notice of Removal of this cause to the United States District Court for the Northern District of Mississippi, Aberdeen Division, and sets forth the following grounds for removal:

1. On December 29, 2021, Plaintiff filed her Complaint in the action entitled *Dorothy Turner vs. O'Charley's, LLC and Unknown Defendant(s) One (1) Through Ten (10)*, State of Mississippi, Circuit Court of Lee County, Civil Action Number CV21-131(W)L (the "State court action"). True and correct copies of all process and pleadings served are attached as collective Exhibit 1.

2. Defendant, O'Charley's, LLC, removes this case within 30 days of being served with process on April 26, 2022.

3. The pending action seeks damages for personal injury following a December 31, 2018 alleged slip and fall incident that is alleged to have occurred at the O'Charley's restaurant in Tupelo, Lee County, Mississippi, over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332. This action may be removed to this Court pursuant to 28 U.S.C. § 1441. The amount in controversy is in excess of \$75,000, exclusive of interest, costs and disbursements, and complete diversity of citizenship exists between Plaintiff and Defendant.

a. Plaintiff Dorothy Turner is alleged in the Complaint to be an adult resident citizen of Lowndes County, Mississippi. *See*, Exhibit 1, Complaint at ¶ 1.

b. Defendant O'Charley's, LLC is alleged in the Complaint to be a foreign corporation licensed to do business in Mississippi. *See*, Exhibit 1, Complaint at ¶ 2. Defendant O'Charley's, LLC is a limited liability company organized and existing pursuant to the laws of the state of Tennessee, whose principal place of business is in Nashville, Tennessee, and is not located in the State of Mississippi. The sole member of O'Charley's, LLC is O'Charley's Holdings, LLC, a Delaware limited liability company with its principal place of business in Nashville, Tennessee.

c. Pursuant to 28 U.S.C. § 1441, the citizenship of Unknown Defendants One (1) through Ten (10) shall be disregarded, as such defendants are sued under fictitious names.

4. The matter in controversy exceeds, and exceeded when the State court action was commenced, the sum of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs. Plaintiff's Complaint seeks damages for personal injury, including past, present, and future medical expenses; past, present and future physical pain and suffering; past, present, and future mental and emotional distress; inconvenience and discomfort; and other relief, following a December 31, 2018 alleged slip and fall incident that is alleged to have occurred at the O'Charley's restaurant in Tupelo. *See*, Exhibit 1, Complaint ¶ 6. The Complaint further alleges that as a result of the fall, she required surgery to the right knee. *Id.* at ¶ 5. The claims of Plaintiff in the underlying lawsuit exceed \$75,000, exclusive of interest and costs. The allegation of a surgical procedure on her knee implicates substantial medical expenses and as the Complaint alleges, "substantial damages." Indeed, Plaintiff's alleged medical expenses exceed \$74,000. If caused by any negligence of Defendant, which is disputed, any reasonable multiple for pain and suffering exceeds \$75,000. Further, counsel for Plaintiff has made a demand for \$742,000.00 to resolve her claims based on these medical expenses and alleged injuries. Accordingly, the amount in controversy clearly

exceeds the requisite threshold set out in 28 U.S.C. § 1332.

5. This Notice of Removal is being timely filed, and as such, the State court action is removable pursuant to 28 U.S.C. § 1441(a) in that this Court has original jurisdiction over the State court action pursuant to 28 U.S.C. § 1332.

6. By reason of the above, O'Charley's, LLC desires and is entitled to have this action removed from the Circuit Court of the Lee County, Mississippi to the United States District Court for the Northern District of Mississippi, Aberdeen Division, such being the district where the State court action is currently pending.

7. Written notice of the filing of this Notice of Removal will be served upon Plaintiff as required by law.

8. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of Lee County, Mississippi, as provided by law.

9. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any rights of O'Charley's, LLC to assert any defense or affirmative matter.

WHEREFORE, O'Charley's, LLC hereby removes the action now pending against it in the Circuit Court of the Lee County, Mississippi, Civil Action Number CV21-131(W)L, to this Court.

RESPECTFULLY SUBMITTED, this the 9th day of May, 2022.

O'CHARLEY'S, LLC

By: /s/ R. Bradley Best
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CERTIFICATE OF SERVICE

I, R. Bradley Best, hereby certify that I have this date served via ECF a true and correct copy
of the above and foregoing to:

James C. Patton, Jr., jpatton@pattonlawoffice.net
P.O. Box 80291
Starkville, Mississippi 39759
Counsel for Plaintiff

THIS, the 9th day of May, 2022.

/s/ R. Bradley Best
R. BRADLEY BEST